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ANOTHER TESTATOR FOILED. — If a man should speak or write of his "niece Eliza Waterhouse" anywhere but in his last will, and, upon looking into the matter, it appeared that he had no niece, but that his wife had two grandnieces of the name, the one legitimate, the other, illegitimate, living in the house with him and his caretaker in his old age, one would surely inquire farther before feeling certain that he meant the legitimate niece. It is to be regretted that the English Court of Appeal has considered itself so root-bound by authority that it must needs deny farther investigation of the surrounding circumstances, and give the wife's legitimate grandniece the bequest. *Re Fish, Ingham v. Rayner*, 38 Sol. L. J. 307.

CODIFICATION. — In re-enacting § 17 of the Statute of Frauds in the English Sale of Goods Act, 1894, it is declared that "there is an acceptance . . . when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not." It would seem that the interpretation of this provision of the Act of 56 & 57 Victoria may go on as merily as has that of the Act of 29 Charles II.

"No contract . . . shall be allowed to be good" has been changed to "A contract . . . shall not be enforceable by action." Formerly a carrier could set up the statute against a consignee suing for lost goods. *Coombs v. Ry. Co.*, 3 H. & N. 510. If the law of such cases is not to be changed, the interpretation of this phrase of the Act must needs be vigorously done. But if the law is changed, there need be no complaint, for the setting up of the Statute of Frauds by third persons is no very commendable practice. Brown on Frauds, 4th ed., § 138 j.

ANTICIPATORY BREACH. — Lord Justice Kay in *Synge v. Synge* (1894), 1 Q. B. 466, has added a stone to the cairn in honor of Lord Cockburn's "inchoate right" in a plaintiff to sue on a promise before the defendant's performance is due. The action was on an agreement of the defendant to leave at his death to the plaintiff a life interest in certain lands owned by him, in consideration of her promise to marry him. Having induced the object of his affection to unite her lot with his, this gentleman conveyed to his daughters the land in question, doubtless hoping to leave any difficulties to his executors. But the lady brought her action immediately, perhaps wisely distrusting the compensation she might get from her husband's property at his decease, and the court gave her the present value of the life interest.

The case shows the nature of the doctrine quite free from the consideration involved usually in the question whether the plaintiff is obliged to go on to perform in order to get his right of action. It is now evident that in England, by a contract, one binds one's self to quite a different thing from the mere performance, — that is, to a course of conduct from the time of promise till that of performance which shall make the promise reasonably probable of fulfilment. It is barely possible in the case in point that the defendant might have caused his daughters to reconvey to him, and so fulfilled his contract. In fact, in all the cases on this subject, the breach has ordinarily been no more than a strong probability that defendant could not perform. Had the question come up for